(8) No. 95-1717

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

UNITED STATES OF AMERICA,

Petitioner,

—v.—

DAVID W. LANIER,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF NOW LEGAL DEFENSE AND EDUCATION FUND, ANTI-DEFAMATION LEAGUE, AYUDA, INC., CENTER FOR WOMEN POLICY STUDIES, CONNECTICUT WOMEN'S EDUCATION AND LEGAL FUND, INC., THE DC RAPE CRISIS CENTER, JEWISH WOMEN INTERNATIONAL, NATIONAL ALLIANCE OF SEXUAL ASSAULT COALITIONS, NATIONAL COUNCIL OF JEWISH WOMEN, NATIONAL ORGANIZATION FOR WOMEN FOUNDATION, INC., NATIONAL WOMEN'S LAW CENTER, NORTHWEST WOMEN'S LAW CENTER, PEOPLE FOR THE AMERICAN WAY, VIRGINIANS ALIGNED AGAINST SEXUAL ASSAULT, WOMEN'S LAW PROJECT, AND WOMEN'S LEGAL DEFENSE FUND IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The NOW Legal Defense and Education Fund and other public interest organizations listed in the Appendix to the attached brief ("amici") hereby respectfully move for leave to file the attached brief amici curiae in support of Petitioner in this case. The consent of the Solicitor General, attorney for Petitioner, has been obtained. The consent of the attorney for Respondent was requested but refused.

The interest of the amici in this case arises from the fact that they are public interest organizations that consistently support the cause of equal justice for women before the courts. The brief amici propose to file supplements the arguments raised by the Solicitor General and other amici in their briefs. Specifically, the brief provides: an analysis of the history and breadth of the constitutionally protected right to bodily integrity showing why it clearly encompasses the right to be free from sexual assault by state actors; a discussion of this Court's jurisprudence on rape in relevant contexts; important information regarding the impact of sexual assault on victims; and discussion of the federal interest in prosecuting acts of rape and sexual assault committed under color of law. Amici believe that the brief will provide this Court with a more complete argument concerning the scope of the constitutional protections provided by 18 U.S.C. § 242.

In light of the foregoing, amici submit that the attached brief will assist this Court in its deliberations in this case.

Therefore, we respectfully urge the Court to permit the brief to be filed.

Respectfully submitted,

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INTEREST OF AMICI CURIAE

Amici curiae, a group of women's and civil rights organizations and sexual assault advocates, file this brief in support of Petitioner. Amici are all organizations with an interest in ensuring fair and equal justice for women, including the proper use of our nation's civil rights laws against abuses of power that deprive women of their constitutionally-protected rights. Specific statements of interest from the amici curiae are included as an Appendix.

STATEMENT OF THE CASE

Amici adopt and here summarize for the Court the facts as stated in Petitioner's brief, in the panel opinion below, United States v. Lanier, 33 F.3d 639, 645-50 (6th Cir. 1994), and in the dissenting opinions in the en banc decision below, United States v. Lanier, 73 F.3d 1380, 1394-1414 (6th Cir. 1996) (en banc).

As described in the panel opinion, Respondent was a Tennessee Chancery Court Judge with extensive local political power and family connections. 33 F.3d at 646. He used the authority of his office to perpetrate multiple criminal sexual assaults on a female litigant and four female court employees who held their jobs utterly subject to his authority to hire and fire them. 33 F.3d at 645. All of these assaults took place in Respondent's chambers, in some cases while he was wearing his judicial robe. 33 F.3d at 653.

The assaults on the court employees included aggressively grabbing and squeezing their breasts and buttocks, see, e.g., 33 F.3d at 647, rubbing up against them with his erect penis, see, e.g., 33 F.3d at 649, and

grabbing one victim's crotch. 33 F.3d at 650. The litigant was subjected to forcible oral rape on two separate occasions after Respondent, who had continuing jurisdiction over her custody award, made statements easily interpreted as a threat to take away her child. 33 F.3d at 647-48. In those two incidents, Respondent grabbed the litigant's hair and neck, forced her jaws open, forced his penis into her mouth and ejaculated. 33 F.3d at 648. Respondent threatened to, and did, retaliate against victims who did not cooperate or who disclosed what he had done to them. See 33 F.3d at 646-49. Respondent's victims did not report him to state authorities for fear of his political power. See 73 F.3d at 1400 (Keith, J., dissenting); 33 F.3d at 646, 649, 650.

Respondent was convicted of seven counts of sexual assault under 18 U.S.C. § 242, and his conviction was upheld by a three-judge panel of the Sixth Circuit. 33 F.3d 639. A sharply divided en banc court dismissed the indictment. 73 F.3d 1380.

SUMMARY OF ARGUMENT

A majority of the Sixth Circuit Court of Appeals, sitting en banc, has refused to remedy a clear constitutional violation shocking to the conscience of this nation. Defying truths that this Court has long held to be self-evident, the Circuit Court ruled that a state judge who rapes and sexually assaults women who are in his chambers on official business cannot be indicted under 18 U.S.C. § 242 because this Court has never specifically stated that such

conduct violates the constitutional right to bodily integrity.[1]

Despite the Sixth Circuit's erroneous conclusion, extensive precedent supports prosecutions under § 242 for sexual assault committed under color of law. This Court's prior decisions demonstrate that the liberty interest protected by the Due Process Clause forbids violations of bodily integrity. Numerous lower courts have held that state officials who use the power of their office to commit rape and sexual assault violate that right to bodily integrity.

Rape and sexual assault violate victims' bodily integrity because they constitute extreme physical violations with traumatic psychological impact. This Court's own descriptions of the experience of rape leave no doubt that this violation is vastly more injurious than the "simple" or "common" assaults to which the Sixth Circuit and Respondent analogize Respondent's conduct. The research on the impact of sexual assault on victims supports the accuracy of this Court's characterizations of the psychological consequences of rape, which also extend to victims of sexual assault short of rape.

Using 18 U.S.C. § 242 to punish a sitting judge who misused his authority to commit multiple instances of criminal sexual assault that violated his victims' bodily integrity vindicates the strong federal interest in preventing assaults by state officials that deprive individuals of their constitutional rights. This federal remedy ensures that a

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[1] 18 U.S.C. § 242 provides that "[w]hoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . shall be fined under this title or imprisoned . . . ."

perpetrator of constitutional crimes does not go unpunished, notwithstanding local biases and genuine barriers to enforcing laws against powerful local officials such as Respondent. Most important, prosecuting Respondent's actions as civil rights violations and constitutional deprivations recognizes their severity.

Because the right to bodily integrity encompassing freedom from sexual assault by a state actor is protected by the Fifth and Fourteenth Amendments, and because this had been made specific at the time of Respondent's predations, we ask this Court to reverse the decision of the court below, which dismissed Judge Lanier's indictment under 18 U.S.C. § 242.

ARGUMENT

I. LONGSTANDING PRECEDENT LEAVES NO DOUBT THAT SEXUAL ASSAULT UNDER COLOR OF LAW CONSTITUTES STATE INTERFERENCE WITH BODILY INTEGRITY AND IS PROSCRIBED BY THE DUE PROCESS CLAUSE

A long line of decisions of this Court unequivocally holds that state interference with bodily integrity violates the liberty interest protected by the Due Process Clause of the Constitution. As numerous lower courts have found to be beyond question, state actors who commit rape and sexual assault can be held accountable for violating bodily integrity under civil and criminal civil rights laws. Contrary to the Sixth Circuit's assertions, e.g., 73 F.3d at 1388, this case law is more than sufficient to make freedom from sexual assault "specific" within the meaning of Screws v. United States, 325 U.S. 91, 104 (1945).

The unqualified right to bodily integrity is deeply rooted in the common law. More than one hundred years ago, in Union Pacific Railway. Co. v. Botsford, 141 U.S. 250 (1891) (upholding trial court's refusal to order surgical examination of woman injured in railway car accident), this Court recognized the common law right to bodily integrity. Justice Gray explained in Botsford that "[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." 141 U.S. at 251.[2]

Subsequent to Botsford, this Court has located the right to bodily integrity in the Constitution, subsumed under rights to privacy and personhood guaranteed in the "liberty interest" secured by the Due Process Clause of the Fifth and Fourteenth Amendments. In a foundational due process case, Rochin v. California, 342 U.S. 165 (1952), this Court held that forcibly pumping a criminal suspect's stomach flagrantly violates his bodily integrity because it "shocks the conscience." Id. at 172. Justice Frankfurter explained that the factual scenario presented a clear due process violation:

> Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there,

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[2] Botsford has been cited in recent case law as authority supporting the general right to bodily integrity. See Planned Parenthood v. Casey, 505 U.S. 833, 926 (1992) (drawing on Botsford in reaffirming "the long recognized rights of privacy and bodily integrity"); Terry v. Ohio, 392 U.S. 1, 9 (1968) (citing Botsford to support proposition that Fourth Amendment protects the "inestimable right of personal security"); Stadt v. University of Rochester, 921 F. Supp. 1023, 1027 (W.D.N.Y. 1996) (stating that right to bodily integrity is "a right which has been recognized throughout this nation's history").

> the forcible extraction of his stomach's contents--this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation.

Id. If extracting morphine from a suspect's stomach "shocks the conscience" of this Court, then surely this case where a judge acting under color of law[3] commited acts of rape and criminal sexual assault is equally unconscionable.

Reaffirming these due process principles, this Court in Ingraham v. Wright, 430 U.S. 651 (1977), found a constitutional violation of bodily integrity in a different context: disciplinary corporal punishment in schools. There the Court observed that

> [a]mong the historic liberties so protected was a right to be free from and to obtain judicial relief, for unjustified intrusions on personal security. While the contours of this historic liberty interest in the context of our federal system of government have not been defined precisely, they always have been thought to encompass freedom from bodily restraint and punishment.

430 U.S. at 673-74, citing Rochin, 342 U.S. 165 (footnotes omitted).

Courts following both Ingraham and Rochin have uniformly recognized what Judge Martha Craig Daughtrey termed the "seemingly axiomatic principle that a citizen's right not to be deprived of life, liberty, or property without

[3] See infra Section III.

due process of law encompasses the right not to be intentionally and sexually assaulted under color of law." Lanier, 73 F.3d at 1411 (Daughtrey, J., dissenting).[4] In Stoneking v. Bradford Area School District, 882 F.2d 720 (3d Cir. 1989), cert. denied, 493 U.S. 1044 (1990), for example, the Third Circuit Court of Appeals held that a teacher's sexual assault upon a student constituted a violation of her constitutional rights giving rise to civil liability under 42 U.S.C. § 1983.[5] The court maintained that "[a] teacher's sexual molestation of a student is an intrusion of the schoolchild's bodily integrity" and therefore a constitutional violation. 882 F.2d at 726. Similarly, the Fifth Circuit Court of Appeals, in Doe v. Taylor Independent School District, 15 F.3d 443 (5th Cir.) (en banc), cert. denied, 115 S. Ct. 70 (1994), another § 1983 case, held that when a teacher sexually molested a student, the teacher deprived her of her liberty interest protected under the Fourteenth Amendment. The court explained,

> If the Constitution protects a schoolchild against being tied to a chair or against arbitrary paddlings, then surely the Constitution protects a schoolchild from physical sexual abuse . . . . It is incontrovertible that bodily integrity is necessarily violated when a state

[4] As Judge Daughtrey also points out in her dissent, Screws clearly established that decisions from lower courts are "a source of reference for ascertaining the specific content of the concept of due process." 73 F.3d at 1409 (Daughtrey, J., dissenting) (citing Screws, 325 U.S. at 96).

[5] As discussed at pp. 10-12, an act that constitutes a constitutional violation under § 1983 also constitutes a constitutional violation under § 242. Because Stoneking was decided well before the events at issue in this case, constitutional protection of the right to be free from sexual assault by a state actor was sufficiently "made specific" within the meaning of § 242.

actor sexually abuses a schoolchild and that such misconduct deprives the child of rights vouchsafed by the Fourteenth Amendment.

15 F.3d at 451-52.[6] District courts addressing this issue also in the context of sexual molestation in schools have agreed that there is a firmly established constitutional right to bodily integrity that encompasses protection from sexual assault by a state actor. See, e.g., Knackert v. Estes, 926 F. Supp. 979, 984 (D. Nev. 1996); Bolon v. Rolla Pub. Schs., 917 F. Supp. 1423, 1431 (E.D. Mo. 1996); Plumeau v. Yamhill County Sch. Dist., 907 F. Supp. 1423, 1435 (D. Ore. 1995); Does v. Covington County Sch. Bd., 884 F. Supp. 462, 466 (M.D. Ala. 1995); Wilson v. Webb, 869 F. Supp. 496, 497 (W.D. Ky. 1994); Doe "A" v. Special Sch. Dist., 637 F. Supp. 1138, 1143-45 (E.D. Mo. 1986). Indeed, before this case, no court considering whether sexual assault by a state actor violates constitutional rights under either § 242 or § 1983 reached a contrary conclusion.

In addition to many circuit and district court decisions arising from cases of sexual abuse in schools, other cases establishing that sexual assault by a state official acting under color of law constitutes a constitutional violation offer fact patterns more closely resembling the instant case. In Wedgeworth v. Harris, 592 F. Supp. 155 (W.D. Wis. 1984), for example, a woman brought a § 1983 action to recover for sexual assault by an on-duty police officer. The court explained that the "plaintiff was allegedly threatened with prosecution if she did not consent to sexual intercourse with [defendant] and . . . she allegedly feared for her

[6] Accord Doe v. Hillsboro Indep. Sch. Dist., 81 F.3d 1395, 1402 (5th Cir.), reh'g en banc granted, 1996 U.S. App. LEXIS 15741 (June 17, 1996); Doe v. Rains County Indep. Sch. Dist., 66 F.3d 1402, 1406 (5th Cir.), reh'g denied, 1995 U.S. App. LEXIS 34713 (Oct. 31, 1995).

personal safety if she refused his advances." 592 F. Supp. at 156. Identifying a flagrant violation of constitutional rights under color of law, the court "entertain[ed] no doubt that an on-duty police officer who uses his position to exert pressure on an unwilling victim so as to force her into sexual intercourse has violated that person's constitutional rights under color of State law." Id. at 159. Ruling that bodily integrity is a vital liberty interest guaranteed by the Fourteenth Amendment, the court explained that sexual assault by an on-duty police officer is "at least as offensive to conscience and justice" as the state-induced vomiting at issue in Rochin v. California. Id. at 160.

This extensive body of case law demonstrates that the constitutional right to freedom from sexual assault by a state official is uncontroverted. This right is so self-evident and axiomatic that, in what are to amici's knowledge the only two circuit court decisions involving criminal prosecutions for sexual assault committed under color of law, the Fifth Circuit Court of Appeals did not consider it necessary to question whether sexual assault falls within the reach of § 242. See United States v. Contreras, 950 F.2d 232 (5th Cir. 1991); United States v. Davila, 704 F.2d 749 (5th Cir. 1983).[7]

These cases thus make clear that the Sixth Circuit majority errs in insisting that no case recognizes the right to be free from sexual assault under color of law "as a

[7] Numerous trial courts have permitted such prosecutions in cases where state actors such as police, border patrol, and correctional officers pled guilty to or were convicted at trial of a § 242 violation for sexual assault on women vulnerable to their authority. See Southern Poverty Law Center Amici Curiae Brief Pet. Cert. App. In two cases, judges pled guilty to § 242 violations for misdemeanor level sexual assaults on women. Id. at 1.

component of an enforceable general constitutional right to 'bodily integrity.'" 73 F.3d at 1388. Indeed, the very concept of a "liberty interest" is devoid of meaning if it does not protect against conduct which this Court has described as "[s]hort of homicide . . . the 'ultimate violation of self.'" Coker v. Georgia, 433 U.S. 584, 597 (1977).[8] Even the most restrained application of due process must recognize the right to freedom from state interference with bodily integrity in the form of sexual assault.

The Sixth Circuit brushes aside these numerous precedents establishing that sexual assault by state officials is a constitutional deprivation on the grounds that these cases could not make the right "specific" because they were brought under 42 U.S.C. § 1983, rather than 18 U.S.C. § 242. See 73 F.3d at 1388, 1393. The majority's attempt to fundamentally distinguish between prohibited conduct under § 1983 and § 242 is clearly unsupported, and was flatly rejected by the original three-judge panel. 33 F.3d at 652 n.3.

As cited by the three-judge panel, several other circuit courts have made it clear that § 1983 and its criminal analog § 242 recognize identical rights and proscribe identical conduct. In United States v. Reese, 2 F.3d 870, 884 (9th Cir. 1993), cert. denied, 114 S. Ct. 928 (1994), for example, the Ninth Circuit observed that "[t]here is nothing wrong with looking to a civil case brought under 42 U.S.C. § 1983 for guidance as to the nature of the constitutional right whose alleged violation has been made the basis of a section 242 charge." Accord United States v. Bigham, 812 F.2d 943, 948 (5th Cir. 1987), reh'g en banc

[8] See infra Section II.

denied, 816 F.2d 677 (1987); see also United States v. Schatzle, 901 F.2d 252, 254-55 (2d Cir. 1990) (upholding jury instructions under § 242 that relied on standard set by § 1983 case). Indeed, the legislative history of § 242 indicates that it is a parallel statute to § 1983.[9] As Judge Nathaniel R. Jones wrote in his dissent,

> Once a right has been made a definite and specific part of the body of Fourteenth Amendment due process rights, a willful violation of that right comes within the purview of section 242. United States v. Stokes, 506 F.2d 771, 776 (5th Cir. 1975) (relying on both criminal and civil cases to hold the right to be free from injury while in police custody had been made specific).

73 F.3d at 1402 (Jones, J., dissenting).[10]

Evidently, the Sixth Circuit would only be satisfied with a decision from this Court involving an identical factual scenario and brought under the same statute. See 73 F.3d at 1392-93.[11] Fortunately, this Court has never

[9] See Cong. Globe, 42nd Cong., 1st Sess. App 38 (explaining that "[t]he model for [§ 242] will be found in . . . the 'civil rights act,'" referring to an earlier version of § 1983), cited in Monroe v. Pape, 365 U.S. 167, 185 (1961).

[10] The Sixth Circuit en banc opinion also insists that the standard for notice is "substantially higher" under 18 U.S.C. § 242 than under 42 U.S.C. § 1983, but the court offers no support for its assertion. See 73 F.3d at 1393.

[11] Indeed, as Judge David A. Nelson wrote in his opinion, "if the majority opinion is correct in the conclusion it draws from the absence of direct Supreme Court precedent, I am not sure that I understand how such a question could ever reach the Supreme Court in the first place." 73 F.3d at 1399 (Nelson, J., concurring in part and dissenting in part).

encountered facts as egregious as those found here. Other courts have agreed, however, that the very notion that the constitutional right to freedom from sexual assault by a state actor is not definitively established is absurd. In Stoneking, the Third Circuit Court of Appeals found it "ludicrous" even to have to inquire whether it was permissible under § 1983 for school teachers and staff to sexually molest students: "Reasonable officials would have understood the 'contours' of a student's right to bodily integrity, under the Due Process Clause, to encompass a student's right to be free from sexual assaults by his or her teachers." 882 F.2d at 726-27. The Third Circuit had no trouble finding that the constitutional right to be free from sexual assault by state actors was clearly defined in 1988. This Court should have no trouble reaching the same conclusion.

II. SEXUAL ASSAULT VIOLATES BODILY INTEGRITY BECAUSE IT IS A PROFOUND PERSONAL VIOLATION WITH A UNIQUELY TRAUMATIC IMPACT ON ITS VICTIMS

This Court's pronouncements on the traumatic impact of rape, and medical and social science literature buttressing those pronouncements and extending them to sexual assault short of rape, demonstrate that sexual assault by public officials is conduct that shocks the conscience and violates its victims' bodily integrity. This Court has repeatedly acknowledged the seriousness of rape in terms that leave no doubt that when a state actor is involved, it is a violation of constitutional dimensions. In Coker v. Georgia, 433 U.S. 584 (1977), for example, although holding that the death penalty for rape is disproportionate and excessive punishment violating the Eighth Amendment, the plurality refused to "discount the seriousness of rape as

a crime." 433 U.S. at 597. This Court described rape as a violation of personal integrity, a conscience-shocking offense:

> It is highly reprehensible, both in a moral sense and in its almost total contempt for the personal integrity and autonomy of the female victim and for the latter's privilege of choosing those with whom intimate relationships are to be established. Short of homicide, it is the '*ultimate violation of self.*'[12]

Id. at 497-98 (emphasis added) (footnotes omitted). Justice Powell, in a separate opinion, echoed the plurality's view on rape, adding that some rapes are as life-destructive as murder. He explained that "[t]he deliberate viciousness of the rapist may be greater than that of the murderer. . . . Some victims are so grievously injured physically or psychologically that life is beyond repair." Id. at 603 (Powell, J., concurring in the judgment and dissenting in part).

The dissent in Coker, written by Chief Justice Burger and joined by then Justice Rehnquist, argued that because rape is such a horrific, traumatizing crime, as the plurality readily conceded, it warrants the death penalty. Chief Justice Burger and Justice Rehnquist stated that "rape is inherently one of the most egregiously brutal acts one human being can inflict upon another." 433 U.S. at 607-08 (Burger, C.J., dissenting). They posited that rape "is not a crime 'light years' removed from murder in the degree of

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[12] Recently, in The Florida Star v. B.J.F., 491 U.S. 524, 542 (1989), Justices White and O'Connor and Chief Justice Rehnquist quoted Coker in declaring that "[s]hort of homicide, [rape] is the 'ultimate violation of self.'" (White, J., joined by Rehnquist, C.J., and O'Connor, J., dissenting).

its heinousness; it certainly poses a serious potential danger to the life and safety of innocent victims apart from the devastating psychic consequences." Id. at 620 (Burger, C.J., dissenting). Chief Justice Burger and Justice Rehnquist also described rape as a profound violation of personal integrity:

> A rapist not only violates a victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. The long-range effect upon the victim's life and health is likely to be irreparable; it is impossible to measure the harm which results. . . . *Rape is not a mere physical attack -- it is destructive of the human personality.*

Id. at 611-12 (Burger, C.J. dissenting) (emphasis added). Although the Coker Court was fiercely divided over whether the death penalty is an appropriate punishment for rape, every Justice agreed that rape is infinitely more damaging to the victim than a mere "physical attack."

This Court has recognized the unique devastation of rape in other contexts as well. For example, in Michigan v. Lucas, 500 U.S. 145 (1991) (upholding state rape-shield statute against Sixth Amendment challenge), this Court maintained that the notice-and-hearing requirement of Michigan's rape-shield statute "represents a valid legislative determination that rape victims deserve heightened protection against surprise, harassment, and unnecessary invasions of privacy." Id. at 150. This Court also acknowledged the calamitous effects of rape in Farmer v. Brennan, 511 U.S. 825, 114 S. Ct. 1970, 1987 (1994), stating that "[p]rison rape . . . is potentially devastating to the human spirit. Shame, depression, and a shattering loss of self-esteem, accompany the perpetual terror the victim

thereafter must endure."

Of course, it is not just rape in prison that devastates the human spirit. As the Coker dissent observed, "[v]olumes have been written by victims, physicians and psychiatric specialists on the lasting injury suffered by rape victims." 433 U.S. at 612 (Burger, C.J., dissenting). These volumes document that rape, in any circumstance, is a brutal experience with lifetime implications.[13] The vast majority of rape victims suffer a form of Post-Traumatic Stress Disorder often referred to as "rape trauma syndrome."[14] Victims suffer nightmares, flashbacks, disorientation, dissociation, sleep and appetite disturbances, constant reliving of the rape, shock, disbelief, helplessness, powerlessness, guilt, self-blame, loss of self-esteem, uncontrollable crying, extreme fear, hypervigilance, anxiety attacks, psychic numbing, fatigue, shame, internalized sense of damage, sexual dysfunction, depression, and suicidal

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[13] See generally Crime Victims Research and Treatment Center, Rape in America: A Report to the Nation 7-8 (1992) (hereinafter Rape in America); Judith L. Herman, Trauma and Recovery 57-58 (1992); Lenore E. A. Walker, Abused Women and Survivor Therapy 23-53 (1994); Lynn Hecht Schafran, Writing and Reading About Rape: A Primer, 66 St. John's L. Rev. 979, 1017-26 (1993); Lynn Hecht Schafran, Maiming the Soul: Judges, Sentencing and the Myth of the Nonviolent Rapist, 20 Fordham Urb. L.J. 439, 443-47 (1992).

[14] See, e.g., Ann Burgess & Lynda Holmstrom, Rape Trauma Syndrome, 131 Am. J. Psychiatry 981, 982 (1974) (coining the term); Edna Foa & David Riggs, Posttraumatic Stress Disorder Following Assault: Theoretical Considerations of Empirical Findings, 4 Current Directions in Psychol. Sci. 61, 63 (1995); Barbara O. Rothbaum & Edna B. Foa, Subtypes of Posttraumatic Stress Disorder and Duration of Symptoms, in Posttraumatic Stress Disorder: DSM-IV and Beyond 23, 26, 29 (Jonathan R. T. Davidson & Edna B. Foa eds., 1993).

thoughts and actions.[15] Many try to ease their psychological pain with alcohol and drugs.[16]

Psychological studies demonstrate the long-term trauma of rape and why it is so profound a violation of bodily integrity. Six months after being raped, the majority of victims still experience what one researcher called a distinct "core of distress."[17] Another study documents that at fifteen to thirty months after being raped, more than forty percent of victims still suffered depression, restricted social interaction, sexual dysfunction, suspicion, and fears.[18] Three years after the rape, a variety of psychological symptoms persist, leading researchers to believe that many victims never recover completely. In one study of victims raped an average of fifteen years before the research began, 16.5 percent still had symptoms of Post-Traumatic Stress Disorder.[19]

In their Coker dissent, Chief Justice Burger and Justice Rehnquist observed that "[v]ictims may recover from the physical damage of knife or bullet wounds, or a

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[15] See, e.g., Walker, supra, at 30-40; Burgess & Holstrom, supra, at 982-85.

[16] See Rape in America, supra, at 7-8.

[17] Dean G. Kilpatrick et al., The Aftermath of Rape: Recent Empirical Findings, 49 Am. J. Orthopsychiatry 658, 668 (1979).

[18] See Karla Fischer, Defining the Boundaries of Admissible Expert Psychological Testimony on Rape Trauma Syndrome, 1989 U. Ill. L. Rev. 691, 706 (citing Nadelson et al., A Follow-Up Study of Rape Victims, 139 Am. J. Psychiatry 1266, 1268 table 2 (1982)).

[19] Dean G. Kilpatrick et al., Criminal Victimization: Lifetime Prevalence, Reporting to Police, and Psychological Impact, 33 Crime & Delinq. 479 (1987).

beating with fists or a club, but recovery from such a gross assault on the human personality [as rape] is not healed by medicine or surgery." 433 U.S. at 612 (Burger, C.J., dissenting).[20] Indeed, the impact of rape is like an invisible permanent disability. Rape relentlessly affects victims' daily lives, their work and school work, and their family and social relationships.[21] As the Medical University of South Carolina wrote in its comprehensive national study, Rape in America, "The fact that 13% of all rape victims have actually attempted suicide confirms the devastating and potentially life-threatening impact of rape."[22]

Rape by a state actor causes harm of constitutional magnitude whether or not the victim bears physical scars. A critical but little known aspect of rape victim impact is that the physical brutality of a sexual assault is not what determines the severity of victim impact. Rape by someone

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[20] For an example of another court that rightly acknowledged the critical difference between physical and sexual assault, see Doe "A" v. Special Sch. Dist., 637 F. Supp. 1138, 1145 (E.D. Mo. 1986) (§ 1983 case stating that school bus driver's sexual assaults on handicapped students "intrude in ways more personal and private than a jailhouse beating and in ways which will surely leave psychological scars long after physical healing is complete").

[21] One woman said ten years after her rape, "How can I expect to marry when I'm too frightened to go on a date?" Someone You Know: Acquaintance Rape (Dystar Television 1986) (documentary film about women raped by boyfriends or friends).

[22] Rape in America, supra, at 7.

known to the victim,[23] particularly, as in the instant case, someone standing in a position of authority and trust, is uniquely destructive.[24] Women raped by someone they know often have a more difficult time recovering than women raped by a stranger. Victims of nonstranger rape are more likely to keep their rape secret because of guilt and shame, more likely to be blamed by themselves and others, and less likely to believe themselves deserving of sympathy and professional help. Victims of physically brutal sexual assaults may have less long-lasting traumatic effects from the assault, relatively speaking, because their visible injuries produce more comfort and support, and less suspicion of false accusation and victim precipitation from the police, hospital personnel, family, and friends.

Moreover, a state actor committing rape in any of its various forms causes a constitutional deprivation. The term "rape" in the popular mind and until recently in the law, traditionally meant penile-vaginal penetration only. In the instant case, one victim was subjected to forcible oral rape on two separate occasions. Modern state statutes provide that rape is any sexual assault that involves forced penetration--that is, vaginal, anal, oral, digital (or other

[23] Contrary to the stereotype of rape as a crime committed by a stranger jumping from the bushes, the vast majority of sexual assaults are committed by someone known to the victim. According to Rape in America, only 22% of forcible rapes and sexual assaults are committed by strangers. Rape in America, supra, at 4.

[24] See, e.g., Sedelle Katz & Mary Ann Mazur, Understanding the Rape Victim: A Synthesis of Research Findings 108 (1979); Sally I. Bowie et al., Blitz Rape and Confidence Rape: Implications for Clinical Intervention, 64 Am. J. Psychotherapy 180 (1990) (explaining that "blitz rape" is a "sudden surprise attack by an unknown assailant" and "confidence rape" involves "some nonviolent interaction between the rapist and victim before the attacker's intention to commit rape emerges").

body part) and object rape. Patricia Searles & Ronald J. Berger, The Current Status of Rape Reform Legislation: An Examination of State Statutes, 10 Women's Rts. L. Rep. 25 (Spring 1987). See, e.g., 18 U.S.C. § 2246 (1988); Ariz. Rev. Stat. Ann. § 13-1401 (West 1989); Minn. Stat. Ann. § 609.342 (West 1992); Tenn. Code Ann. § 39-13-503 (Supp. 1995). Of these several types of sexual assault, Dr. Nicholas Groth, one of the country's most prominent experts in the field, has written:

> [F]rom a clinical . . . point of view, it makes more sense to regard rape as any form of forcible sexual assault, whether the assailant intends to effect intercourse or some other type of sexual act. There is sufficient similarity in the factors underlying all types of forcible sexual assault--and in the impact such behavior has on the victim--so that they may be discussed meaningfully under the single term of rape.

A. Nicholas Groth, Men Who Rape: The Psychology of the Offender 3 (1979).

Two of the judges writing separately below stated that they would only uphold Respondent's felony count convictions, not the misdemeanor counts. 73 F.3d at 1394 (Wellford, J., concurring in part and dissenting in part); id. at 1397-98 (Nelson, J., concurring in part and dissenting in part). This distinction runs counter to the sentencing scheme for § 242, which clearly encompasses a continuum of constitutional violations, including misdemeanors and felonies. Deprivations of constitutional rights that result in bodily injury or death, or involve the use of weapons, kidnapping, or aggravated sexual abuse, constitute a felony, while all other deprivations are punishable as misdemeanors. 18 U.S.C. § 242. Congress has viewed the statute's modern range of penalties as "graduated in

accordance with the seriousness of the *results* of violations." S. Rep. No. 721, 40th Cong., 1st Sess. (1967), reprinted in 1968 U.S.C.C.A.N. 1839, 1841 (emphasis added) (discussing 1968 amendments to penalty provisions).[25] Drawing lines between different types of sexual assault in a case involving the deprivation of constitutional rights misperceives the gravity of the consequences of *all* types of sexual assaults for the victims.

Women victimized by sexual assault short of rape, such as the misdemeanor counts in this case which include Respondent's aggressively grabbing and squeezing the victims' breasts and buttocks, see, e.g., 33 F.3d at 647, rubbing up against them with his erect penis, see, e.g., 33 F.3d at 649, and grabbing one victim's crotch, 33 F.3d at 650, also experience these assaults as a serious violation of their bodily integrity and suffer the same psychological injuries as rape victims. One study of the psychological consequences of criminal victimization that differentiated between types of sexual assault found that seventy-one percent of victims of completed rape and forty-two percent of victims of "completed molestation" experienced Post-Traumatic Stress Disorder.[26] Kilpatrick et al., supra, at 487.

Another study of the psychological consequences for

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[25] Sexual assault short of rape, the conduct at issue in the misdemeanor counts here, has been found to deprive victims of their constitutionally protected liberty interest. See, e.g., Doe "A", 637 F. Supp. at 1145.

[26] Completed molestation is defined in the study as "actual sexual contact involving assailant's touching the victim's breasts or pubic area or making the victim touch his penis." Dean G. Kilpatrick et al., The Psychological Impact of Crime: A Study of Randomly Surveyed Crime Victims 12 (Mar. 1987) (NIJ Grant No. 84-IJ-CX-0039).

women subjected to unwanted physical sexual contact in the workplace examined twenty-five women, one of whom was orally raped while the others experienced varying degrees of unwanted sexual contact short of rape. All but one of these women were diagnosed with Post-Traumatic Stress Disorder, some form of Depressive Disorder, or both. Louise F. Fitzgerald et al., Borderline or Traumatized? The Psychological Antecedents and Consequences of Sexual Harassment (and) Litigation (paper presented to the Annual Conference of the Association for Women in Psychology, Mar. 14-17, 1990) and Letter from Louise F. Fitzgerald to Lynn Hecht Schafran, Senior Staff Attorney, NOW LDEF (July 23, 1996) (on file with the NOW LDEF).

Federal courts have recognized that unwanted sexual contact that does not involve bodily injury, and that may appear minor, is in fact deeply serious. For example, in Jordan v. Gardner, 986 F.2d 1521 (9th Cir. 1993) (en banc), the Ninth Circuit Court of Appeals held that clothed body searches of female prisoners by male guards constituted cruel and unusual punishment, because of the painful psychic trauma to a number of inmates of being forced to endure male guards touching their breasts and crotch area. Id. at 1525-26. The Ninth Circuit credited the testimony of expert witnesses that "differences in gender socialization would lead to differences in the experiences of men and women with regard to sexuality," id. at 1526, and observed:

> We do not chart new territory in upholding the district court's finding that men and women may experience unwanted intimate touching by members of the opposite gender differently. In the Title VII context, we concluded:
>
> > [B]ecause women are disproportionately victims of

> rape and sexual assault, women have a stronger incentive to be concerned with sexual behavior. . . . Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive.

986 F.2d at 1526 n.5 (quoting Ellison v. Brady, 924 F.2d 872, 879 (9th Cir. 1991)). In sum, all of Respondent's conduct is serious, criminal, and a constitutional violation of bodily integrity, because of both its character and its impact on the victims.[27]

Despite this massive evidence of the uniquely traumatic character of rape and sexual assault, Respondent describes his actions as "common assaults with no apparent constitutional implications," (Opp'n Pet. Cert. at 4) repeatedly refers to his sexual attacks as mere "physical assaults," id. at 3, 4, and likens his crimes to "the conduct of a judge who beat up a lawyer in a barroom brawl." Id. at 4. The Sixth Circuit compares Respondent's sexual predations to "simple" assault. See, e.g., 73 F.3d at 1387. Unlike simple assault, sexual assault is a gross personal violation. For that reason, criminal statutory schemes distinguish between sexual assault and physical assault. Compare, e.g., 18 U.S.C. §113 with 18 U.S.C. §§2241 et seq (West 1996); N.Y. Penal Law § 120.00 et seq with N.Y. Penal Law § 130.20 et seq (McKinney's 1996). Apart from the patent inaccuracy of Respondent's and the Sixth Circuit's characterizations, their persistent conflation of

[27] The jury found all of Respondent's conduct, including the misdemeanors to be "physical abuse. . . of a serious and substantial nature that involve[d] physical force, mental coercion, bodily injury or emotional damage which is shocking to the conscience." 33 F. 3d at 652.

sexual assault and simple assault trivializes and demeans the pain and suffering of Respondent's victims and deliberately ignores the constitutional magnitude of the sexual assaults.[28]

III. WHERE RESPONDENT'S ACTS OF RAPE AND SEXUAL ASSAULT ARE CLEARLY COMMITTED UNDER COLOR OF LAW, § 242 IS THE ONLY ADEQUATE REMEDY TO VINDICATE THE FEDERAL INTEREST IN ENSURING PROTECTION OF HIS VICTIMS' RIGHTS

By specifically targeting individuals who misuse their legal authority to deprive others of constitutional rights, § 242 serves a vital national interest in uniform enforcement of federal law, and protects individuals from abuses committed by officials of state governments. Applying § 242 to acts of sexual assault committed under color of law vindicates the purpose of the statute, as well as furthers the national interest in preventing all forms of violence against women.

There is a strong national interest in ensuring that all

[28] The intent of Respondent and the Sixth Circuit to downplay the seriousness of Respondent's conduct is apparent not only in their misleading use of the terms "common" and "simple assault," see, e.g., Opp'n Pet. Cert. at 3, 4; 73 F.3d at 1394, but also in their wholly inappropriate use of the term "sexual harassment," see, e.g., Opp'n Pet. Cert. at 1; 73 F.3d at 1382, to describe Judge Lanier's sexual assaults. Although sexual harassment is serious and damaging conduct which can include physical contact legally cognizable as sexual assault, it is a civil law term which includes non-contact abuse. The grand jury indictment alleges that Respondent sexually assaulted his victims under color of law in violation of 18 U.S.C. § 242; the indictment bears no mention whatsoever of "sexual harassment."

women are free from civil rights deprivations that take the form of rape and sexual assault, whether committed by state officials or by others. The Violence Against Women Act ("VAWA"), recent federal legislation addressing the national epidemic of sexual assault, domestic violence and other forms of violence against women, and extending federal civil rights protections to acts of sexual and other forms of gender-based violence committed by private individuals,[29] only underscores the gravity and national importance of this issue. Pub. L. No. 103-322, Title IV, codified at 42 U.S.C. §§13931 et seq. (1994).[30] In passing this legislative package, Congress expressed obvious concern over the shocking rates of violence against women and the inadequacy of existing state remedies, as documented in a voluminous legislative record covering

[29] The VAWA's civil rights remedy guarantees all citizens the right to be free from gender-based violence. 42 U.S.C. § 13981 (1994) (the "Civil Rights Remedy"). The Civil Rights Remedy provides a private cause of action in federal court: "a person. . . who commits a crime of violence motivated by gender and thus deprives another of the right [to be free from gender-motivated violence] shall be liable to the party injured." Id.

[30] In passing the VAWA and granting a civil remedy, Congress clearly did not mean to supplant existing federal civil rights remedies. Senate Comm. on the Judiciary, The Violence Against Women Act of 1993, S. Rep. No. 103-138, 103d Cong., 1st Sess. 53 (1993) (hereinafter 1993 Senate Report). Indeed, Congress recognized § 242 and other federal hate crimes statutes as one element of the VAWA's comprehensive scheme. In the omnibus crime bill that included the VAWA, Congress passed the Hate Crimes Sentencing Enhancement Act, which increases penalties under § 242 and other federal criminal civil rights statutes, 18 U.S.C. §§ 241, 245, and 247, for civil rights violations that include aggravated sexual abuse. Pub. L. 103-322, § 320103, 108 Stat. 2109 (1994).

four years of hearings and committee reports.[31] Although the VAWA civil rights provision targets private civil rights violations, efforts to use § 242 to prosecute sexual violence committed by public officials under color of law reflect this heightened federal concern with preventing violence against women.[32]

Prosecutions of public officials under § 242 also further the federal interest in uniform application of the laws. State officials may be reluctant to take action against someone of authority in the community. Only a federal civil rights law such as § 242 can ensure that a combination of local biases, disparities of power, and limitations of state law remedies does not allow these perpetrators to go unpunished.

In this case, Respondent's position and family connection to the local prosecutor's office made state law remedies all but useless. Respondent was a judge, and he and his family members had "occupied positions of power and political authority in Dyersburg, Dyer County, Tennessee, for several generations." 73 F.3d at 1394 (Wellford, J., concurring in part and dissenting in part). In addition, Respondent was the only judge in the county, 33 F.3d at 645, and had particular power over almost all matters of family law and other common areas of litigation. 73 F.3d at 1403 (Daughtrey, J., dissenting). Had the

[31] See, e.g., 1993 Senate Report at 37-50; Violent Crime Control and Law Enforcement Act of 1994, H.R. Conf. Rep. No. 103- 711, 103d Cong., 2d Sess. 385-86 (1994) (hereinafter 1994 Conference Report).

[32] As discussed supra, federal prosecutors have used this statute to prosecute sexual assault under color of law. See, e.g., Contreras, 950 F.2d 232; Davila, 704 F.2d 749; lower court and unreported cases discussed in the appendix to the amici brief of the Southern Poverty Law Center and others. Southern Poverty Law Center Amici Curiae Brief App.

victims in the instant case tried to pursue state law charges against Respondent, query whether his brother, the local prosecutor, would have pursued this case,[33] or whether this small, tightly-knit community could have been immune to local biases and stereotypes.[34] The majority opinion below makes a grievous error by suggesting that state law provides adequate remedy for Respondent's crimes, see, e.g., 73 F.3d at 1393 n.12, 1394 n.13, despite the demonstrated inadequacy of state law remedies in this case.

Finally, applying § 242 to Respondent's conduct furthers the most "traditional" area of federal interest -- preventing constitutional violations committed under the auspices of the state. United States v. Price, 383 U.S. 787, 806 (1966). The Reconstruction Congress adopted the original statutes, which now exist in the modern § 242 and

[33] Indeed, Judge Lanier's predations only came to light as a result of an unrelated Federal investigation by the United States Attorney and the FBI into potential political corruption involving Respondent and his brother. Darcy O'Brien, The Power to Hurt (1996) (documenting the entire history of the investigation and prosecution of this case).

[34] This is not just a possible problem in investigating a powerful judge in Dyersberg, Tennessee, but a national problem in prosecuting rape and sexual assault generally. In passing the VAWA, Congress specifically found compelling evidence that bias against women continues to infect every facet of the criminal justice system and that crimes disproportionately affecting women, including rape and sexual assault, are taken less seriously. 1993 Senate Report, supra, at 49. Police, prosecutors, juries and judges routinely subject female victims of rape and sexual assault to a wide range of unfair and degrading treatment that contributes to the low rates of reporting and conviction that characterize these crimes. Id. at 44-46; see also 1994 Conference Report, supra, at 385. Numerous witnesses testified that stereotypes like "she asked for it," "she made it up" or "no harm was done" are commonplace. Senate Comm. on the Judiciary, The Violence Against Women Act of 1991, S. Rep. No. 102-197, 102d Cong., 1st Sess. 39 (1991) (citations omitted).

other laws, in order to "uproot" the "abuse of basic civil and political rights" by states and their officials that was so prevalent at the time. Screws, 325 U.S. at 116 (Rutledge, J., concurring); see also Price, 787 U.S. at 278-79. When those entrusted to enforce the law abuse that power to commit gross constitutional violations, victims must look to federal civil rights law for a remedy.

Prosecuting Respondent's conduct under § 242 fits squarely within the purposes of the statute. Respondent used his authority as a judge to commit violent and degrading acts of rape and sexual assault against women particularly vulnerable to his state authority, and then used that same power to intimidate his victims into silence.[35] In 1941, this Court recognized the relationship between the defendant's power and his or her ability to commit a constitutional violation, in defining action taken under color of law as "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law," United States v. Classic, 313 U.S. 299, 326, reh'g denied, 314 U.S. 707 (1941). Respondent's position as a judge gave him the

[35] Although it is not an issue before the court, Respondent continues to press the patently absurd contention that § 242 should not be applied because his conduct was "personal" and "private," Opp'n Pet. Cert. at 3-4, and not conducted under color of law. The majority opinion below did not address this ground for reversal. The original three-judge panel resoundingly rejected this argument. 33 F.3d at 653. Besides attempting to hide behind the myth that rape and sexual assault are "private" matters unworthy of police, prosecutorial, or other criminal justice intervention, this argument ignores the law and the plain facts.

ability to prey on his victims.[36]

As a chancery court judge, Respondent apparently had sole authority to hire and fire his victims who were court employees; in the case of the litigant he raped, he had the power to take away her child. 33 F.3d at 647-49. The victims were present in the judge's chambers because they worked for him, they were applying for a job, they were making a work-related presentation, or they had litigation matters pending before him. 33 F.3d at 645-46. As the original three-judge panel explained in rejecting the argument that Respondent was not acting under color of law, "all of the assaults took place in defendant's chambers during working hours, and during each assault, there was at least an aura of official authority and power. . . . Further, there was evidence that defendant used his position to

[36] Circuit court opinions have uniformly held that an actual nexus between the state authority and the abusive act satisfies an under color of law requirement. See, e.g., Bennet v. Pippin, 74 F.3d 578, 589 (5th Cir.) (sheriff who allegedly raped murder suspect abused power "held uniquely because of a state position"), reh'g denied, 1996 U.S. App. LEXIS 4081 (Mar. 1, 1996); Dang Vang v. Van Xiong Toyed, 944 F.2d 476, 480 (9th Cir. 1991) (where female Hmong refugees were raped by official of state employment security office during meeting about obtaining employment, "jury reasonably could have concluded that defendant used his government position to exert influence and physical control over these plaintiffs in order to sexually assault them"); Wilson v. Webb 869 F. Supp. 496, 497 (W.D. Ky. 1994) (teacher molested students "on school grounds, during school hours, and within the context of the unique teacher-student relationship"). Only where there is clearly no relation between a defendant's authority and the circumstances of the crime have courts ruled that no state action was involved. See, e.g., Becerra v. Asher, 921 F. Supp. 1538 (S.D. Tex. 1996) (mere fact child assaulted by public school teacher insufficient where assaults occurred in plaintiff's home five or six months after child withdrew from school where teacher taught); Long v. Mercer County, 795 F. Supp. 873 (C.D. Ill. 1992) (plaintiff failed to allege sexual assault related to performance of defendant's duties).

intimidate his victims into silence." 33 F.3d at 653. Respondent threatened one victim, a litigant before his court, by making it clear to her that if she told anyone about the assault, he would not allow her to retain custody of her daughter. See 33 F.3d at 647-48. He told another victim that "he was a judge, and everyone should be afraid of him." Id. at 649. He threatened a third victim by stating that "if she reported his behavior it would hurt her more than it would hurt him." Id. at 647. These were not empty threats; Judge Lanier took reprisal against victims who refused to comply with his demands. See id. at 646-50. Indeed, Respondent was quite literally "clothed with the authority of state law," Classic, 313 U.S. at 326, as he committed some of the assaults at issue wearing his judicial robes. 33 F.3d at 653. It is this particularly reprehensible portrait of a judge, an official charged with administering justice, "committing various abhorrent and unlawful sexual acts in his chambers, oftentimes while wearing his judicial robe" that "shocked the conscience" of the three-judge panel. Id.

Victims of a judge who violates their constitutional rights under color of law need the federal protections of § 242. Judge Damon Keith, in his dissent to the en banc opinion, summarized in a few sentences why prosecution under § 242 of one of the "guardians and trustees of the justice system" is so essential in this case:

> If federal law is not to protect women from being forced to gratify a judicial officer at his request under threats of losing their jobs or children, whom is it to protect? Certainly, it was not intended to protect judges who commit such outrageous acts. No person is above the law, especially a judge.

73 F.3d at 1400 (Keith, J., dissenting). Applying this statute to Respondent's conduct ensures that even a sitting judge shall answer to the authority of the United States Constitution.

CONCLUSION

The Sixth Circuit en banc majority stands alone in its unconscionable conclusion that the federal constitution provides no protection against sexual assault under color of law by a sitting judge. Accordingly, this Court should reverse the en banc opinion of the Sixth Circuit dismissing Judge Lanier's indictment under 18 U.S.C. § 242.

Respectfully submitted,

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[37] Counsel for Amici gratefully acknowledge the dedicated assistance of NOW LDEF law student intern Johanna Shargel.

APPENDIX

APPENDIX

STATEMENTS OF THE AMICI CURIAE

NOW Legal Defense and Education Fund

NOW Legal Defense and Education Fund (NOW LDEF) is a leading national non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and to secure equal rights. NOW LDEF was founded as an independent organization in 1970 by leaders of the National Organization for Women. NOW LDEF has been engaged on many fronts in efforts to eliminate gender-motivated violence, including sexual assault, and has a longstanding commitment to addressing inequality and gender bias in our state and federal judicial systems. NOW LDEF chaired the national task force that was instrumental in passing the historic Violence Against Women Act (the "Act") and is appearing and has argued as amicus curiae in the first case in which a sexual assault victim is pressing claims under the Act's civil rights remedy. NOW LDEF also has participated as counsel and as amicus curiae in numerous cases in support of the rights of women who have been the victims of sexual assault and other gender-motivated violence. NOW LDEF's project, the National Judicial Education Program, developed a model judicial education curriculum, Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault, now in use across the country.

Anti-Defamation League

Since its founding in 1913, the Anti-Defamation League ("ADL") has pursued the objective set out in its charter "to secure justice and fair treatment to all citizens alike and to put an end forever to unjust and unfair discrimination against and ridicule of any sect or body of citizens." ADL remains vitally interested in protecting the civil rights of all persons, and has previously filed numerous amicus curiae briefs before this Court in support of landmark federal civil rights laws. The League also offers the perspective of a national organization responsible for developing legislation, upheld as constitutional in Wisconsin v. Mitchell, 113 S. Ct. 2194 (1993), which responds specifically, through enhanced penalties, to bias-motivated criminal conduct.

Ayuda, Inc.

Founded in 1971, Ayuda, Inc., is a comprehensive center providing legal and social services to the Latino community as well as to other immigrants and refugees in the Washington, D.C., metropolitan area. Ayuda's Clinical Legal Latina serves victims of sexual and domestic violence. Each year Ayuda's legal staff assists between one and two thousand women who have been victims of sexual assault perpetrated by employers, family members, acquaintances, husbands or boyfriends. Our work on behalf of battered women and women who have been victims of sexual assault, particularly those victims who are non-English-speaking or foreign-born, led to Ayuda's leadership role in assisting in the drafting of many of the provisions of the Violence Against Women Act that affected women of color and immigrant women. Ayuda provided expert counsel and technical assistance which led to the inclusion of key elements in the legislation. Ayuda also conducts

trainings on domestic violence, the Violence Against Women Act, and the immigrant experience for judges, attorneys, health care professionals, law enforcement officials, and other groups locally, across the country, and around the world.

Center for Women Policy Studies

The Center for Women Policy Studies was founded in 1972 as the first national policy research and advocacy institute focused exclusively on issues of social and economic justice for women. The Center conducts research and advocacy programs on violence against women, work/family and "diversity" policies of employers, education, and other relevant issues.

Connecticut Women's Education and Legal Fund, Inc.

The Connecticut Women's Education and Legal Fund, Inc. (CWEALF) is a non-profit women's rights organization incorporated in 1973. CWEALF has over 1,400 members. Its mission is to work through legal and public policy strategies and community education to end sex discrimination and to empower all women to be full and equal participants in society. CWEALF is shocked that the Sixth Circuit did not recognize the seriousness of sexual assault in this case. It seeks to join this brief as amicus curiae because it believes that freedom from sexual assault by state actors is clearly a constitutionally-protected right.

The DC Rape Crisis Center

The DC Rape Crisis Center, established in 1972, provides direct services to survivors of sexual violence and education on related issues. The Center serves the Washington metropolitan area, utilizing a staff of eight and

a volunteer corps of 120. The DC Rape Crisis Center has a strong interest in this case because of its role as advocates for survivors of sexual violence.

Jewish Women International

Jewish Women International (JWI) was founded in 1897 as B'nai B'rith Women by a group of Jewish women who sought to improve the quality of life for women in their communities. Now an organization of over 50,000 women in the United States and Canada, JWI continues to speak out on issues that affect women -- in their communities, families, and in society. JWI believes that every person is entitled to a just and fair judicial system, free of abuse and violence against women.

National Alliance of Sexual Assault Coalitions

Organized in September of 1995, the National Alliance of Sexual Assault Coalitions (NASAC) is a national organization focusing on public policy and public education to end sexual violence. NASAC has developed a comprehensive grassroots communications network of state coalitions from across the United States who have extensive state public policy experience. As such, NASAC effectively advocates for the needs, rights and concerns of victims of sexual assault.

National Council of Jewish Women

The National Council of Jewish Women, Inc. (NCJW) is a volunteer organization, inspired by Jewish values, that works through a program of research, education, advocacy, and community service to improve the quality of life for women, children, and families and strives to ensure individual rights and freedoms for all. Founded in 1893,

NCJW has 90,000 members in over 500 communities around the country. The National Council of Jewish Women believes that "all individuals have the fundamental right to live with their human rights and dignity guaranteed." In addition, given NCJW's <u>National Resolutions</u>, which support "the elimination of and protection from all forms of harassment, violence and abuse against women," we join this brief.

National Organization for Women Foundation, Inc.

The National Organization for Women Foundation is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States, with a membership of over 250,000 women and men in more than 600 chapters in all 50 states and the District of Columbia. Since its inception in 1986, NOW Foundation's goals have included prosecution of violence against women, including sexual assault, and assuring fair and equal treatment of women in the judicial system. NOW Foundation has a strong interest in the full prosecution of judicial misconduct affecting the rights of women, particularly where, as in the instant case, female litigants were assaulted and intimidated under color of law.

National Women's Law Center

The National Women's Law Center (NWLC) is a non-profit legal advocacy organization that has been working since 1972 to advance and protect women's legal rights. NWLC's primary goal is to ensure that public and private sector practices and policies better reflect the needs and rights of women. NWLC has participated as <u>amicus</u> <u>curiae</u> in numerous cases in the Supreme Court involving the legal

rights of women, and has a deep and abiding interest in ensuring that the right of a woman to freedom from interference with her bodily integrity, including through sexual assault, is fully protected.

Northwest Women's Law Center

The Northwest Women's Law Center (NWLC) is a non-profit public interest organization that works to advance the legal rights of all women through litigation, education, legislation and the provision of legal information and referral services. Founded in 1978, the NWLC is dedicated to challenging barriers to gender equality and ensuring that victims of all forms of discrimination and violence are able to obtain appropriate relief. Toward that end, the NWLC has a strong interest in ensuring that the fundamental purpose of federal civil rights statutes such as 18 U.S.C. § 242 are not undermined by limiting the liability of government officials whose abuse of power results in the deprivation of individuals' constitutional rights.

People For the American Way

People For the American Way ("People For") is a nonpartisan citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of religious, civic, and educational leaders devoted to our nation's heritage of tolerance, pluralism, and liberty, People For now has over 300,000 members nationwide. People For has been actively involved in efforts to combat discrimination and promote equal rights, including efforts to protect the rights of women. People For regularly supports the enactment of civil rights legislation, participates in civil rights litigation, and conducts programs and studies directed at reducing problems of bias, injustice, and discrimination. The instant

case is of particular importance in order to vindicate the fundamental principle that violation of bodily integrity by a government official acting under color of state law, particularly including intentional sexual assault as in this case, violates the Constitution.

Virginians Aligned Against Sexual Assault

Formed in 1980, Virginians Aligned Against Sexual Assault (VAASA) is a statewide coalition of 21 Virginia sexual assault crisis centers, other organizations, and individuals. VAASA's statement of purpose is to work toward the elimination of sexual assault. Through providing advocacy, education and training, VAASA strives to achieve this goal. VAASA has served as an active member of various administrative and legislative study committees and commissions concerning sexual assault issues.

Women's Law Project

The Women's Law Project is a Philadelphia-based non-profit legal center that seeks to advance the legal status of women through litigation, public education, and individual counseling. Since its founding in 1974, the Law Project has broken ground for women in many areas, including reproductive rights, sexual assault, child support, child custody, divorce, prison conditions, employment and insurance. Assisting women who are victims of sexual and physical assault has been a major focus of both the Law Project's telephone counseling service, which handles approximately 5,000 calls per year, and its litigation efforts. Currently, the Law Project is also leading national efforts to end insurance discrimination against victims of domestic violence.

Women's Legal Defense Fund

Founded in 1971, the Women's Legal Defense Fund (WLDF) is a national advocacy organization that develops and promotes public policies to help women achieve equal opportunity, quality health care, and economic security for themselves and their families.